

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

210

CRM-M-47759-2023
Date of Decision: 17.11.2023

Paramjeet

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Satbir Singh Kanwar, Advocate for the petitioner.
Mr. Vishal Kashyap, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.21 dated 05.02.2021, under Section 20 of the NDPS Act, 1985 registered at Police Station Sadar Bahadurgarh, District Jhajjar.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 05.02.2021, which is more than 2 year and 9 months. He submitted that this is a second successive bail petition filed by the petitioner and his earlier bail petition was dismissed by detailed order passed by this Court vide Annexure P-4 on 30.11.2021. He submitted that even thereafter about 2 years have elapsed and therefore the second successive bail petition is maintainable due to the long custody of the petitioner. The total custody of the petitioner is more than 2 years and 9 months as on today. He further

submitted that the petitioner has clean antecedents and is not involved in any

other case. The allegations against the petitioner are that he was apprehended along with other co-accused in different cars and from the car of the petitioner there was recovery of 40 Kg of *Ganja Patti* and from the other car in which petitioner was not present, there was recovery of 260 Kg of *Ganja Patti*. He further submitted that be that as it may now only 13 witnesses out of 23 prosecution witnesses have been examined and while referring to the interlocutory orders passed by the learned trial Court, he submitted that although earlier the matter was adjourned by the trial Court because the details with regard to CDR locations were sought but thereafter repeatedlyailable warrants were issued against the prosecution witnesses especially, from 24.01.2023 onwards but they did not care to depose before the Court. He submitted that the petitioner has clean antecedents and has already faced incarceration of more than 2 years and 11 months and there has been unreasonable delay in the trial and therefore referred to the judgments of Hon'ble Supreme Court in '*Satender Kumar Antil versus Central Bureau of Investigation and another, [2022 (10) SCC 51]*', '*Mohd. Muslim @ Hussain versus State (NCT of Delhi)*', 2023 AIR (SC) 1648, '*Dheeraj Kumar Shukla versus The State of Uttar Pradesh*', 2023 SCC Online SC 918, '*Rabi Prakash versus The State of Odisha*', *Special Leave to Appeal (Criminal) No.4169 of 2023 and Manish Sisodia versus Central Bureau of Investigation*, arising out of *Special Leave Petition (Criminal) Nos.8167 and 8188 of 2023* in this regard and submitted that the right to speedy trial is the fundamental right under Article 21 of the Constitution of India and submitted that in addition to the aforesaid submissions, the petitioner is also not a habitual offender and considering the aforesaid facts and circumstances, the petitioner may be considered for

3. On the other hand, Mr. Vishal Kashyap, DAG, Haryana has submitted that so far as the custody period of the petitioner, the same is also correct. He submitted that the charges in the present case were framed on 14.07.2021 and 13 out of 23 prosecution witnesses have been examined. He has however submitted that since the quantity involved in the present case is falling in the category of commercial quantity, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. He submitted that so far as the antecedents of the petitioner is concerned, he also submitted that petitioner has clean antecedents and is not involved in any other case. He further submitted that from the car of the present petitioner, there was recovery of 40 Kg of *Ganja Patti*.

4. I have heard the learned counsels for the parties.

5. It is a case where the petitioner has already faced incarceration of more than 2 years and 9 months. Earlier, he had filed a petition for grant of bail, which was dismissed by this Court on 30.11.2021 and now after a lapse of two years, the trial is still pending and therefore the successive bail petition filed by the petitioner would be maintainable.

6. The charges in the present case were framed on 14.07.2021 and about two years and four months have elapsed after the framing of the charges and trial is still pending and only 13 out of 23 prosecution witnesses have been examined. A perusal of the interlocutory orders passed by the learned trial Court would show that on a few dates, evenailable warrants have been issued against the prosecution witnesses in this case.

7. Hon'ble Supreme Court in *Satender Kumar Antil's case (supra)* has discussed this serious issue with regard to delay in trial and its effect on the Right to Life of an individual under Article 21 of the Constitution of

“49. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm.

We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”.

8. Hon'ble Supreme Court in '**Mohd. Muslim Hussain's case (supra)**' has dealt with this issue with regard to delay in trial and long custody of the accused person vis-a-vis the bar contained under Section 37 of the NDPS Act. The relevant portion of the aforesaid judgment contained in para Nos.19 and 20 are reproduced as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that

the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

9. Hon'ble Supreme Court in '**Dheeraj Kumar Shukla's case** (**supra**) has observed as under:-

"3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial

in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

10. Hon'ble Supreme Court in '**Rabi Prakash's case (supra)**' has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

11. After hearing the learned counsel for the parties, this Court is of the view that considering the long custody of the petitioner, which is more than 2 years and 9 months and the fact that charges have been framed 2 years and 4 months ago and only 13 out of 23 prosecution witnesses have been examined and also the fact that trial Court was constrained to issue bailable warrants against the prosecution witnesses on a few dates and also

considering the fact that the petitioner has no criminal antecedents,

this Court deems it fit and proper to grant regular bail to the petitioner. The bar contained under Section 37 of the NDPS Act will not apply to the petitioner in the light of Article 21 of the Constitution of India and also in view of the aforesaid judgments rendered by the Hon'ble Supreme Court.

12. Consequently, the present petition is *allowed*. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

13. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

17.11.2023
'Rajneesh'

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No